

IMPACT OF LABOR LAWS AND REGULATIONS
ON AGRICULTURAL LABOR MARKETS

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Introduction

Federal and state labor laws and regulations impact agricultural employers and employees in several ways. They affect the productivity and cost of hired labor which in turn affects the agricultural producers' demand for labor. They affect the supply of labor through explicit impacts on the monetary and non-monetary compensation received by workers. There are implicit supply impacts because the perceived characteristics of farm work among potential farm workers are influenced by labor law coverage. Exclusions of agricultural employment resulting in fewer benefits than enjoyed by nonfarm workers are particularly important. Labor laws and regulations also impact on the employer-employee contractual relationship. A contract of employment between an employer and employee commonly specifies such items as job description, compensation, grievance procedures, disciplinary practices, and benefits following termination by either employer or employee of the contractual relationship. Labor laws and regulations affect these specifics of the contract. A final impact is on the labor management practices of employers. Recruiting, hiring, firing, recordkeeping, training, wage compensation, perquisites, and disciplinary procedures are examples of labor management practices potentially influenced by labor laws and regulations.

The concern with the impact of government intervention in markets extends from the popular press to the most sophisticated and complex

economic analyses of the day. Some see government intervention as a factor in the fate of small businesses, our capacity to provide employment for minorities and underprivileged workers, the future of the family farm and survival of the industrial base of some communities. No analysis of the structure of labor markets is complete without consideration of government intervention.

This paper does not address whether or not government, through labor laws and regulations, should intervene in agricultural labor markets. That decision has been made. During the last 20 years, the differences in coverage between farm and nonfarm workers have decreased substantially. The trend is clearly toward expanded coverage. The fundamental questions which remain relate to the pros and cons to various interest groups of increased coverage, and the effective implementation, administration and enforcement of current and proposed coverage provisions.

Other papers for this conference identify objectives for farm labor and rural manpower public policies. There are some general objectives specifically related to labor laws and regulations that pervade and in fact provide the base for analysis of the impact of labor laws and regulations on agricultural labor markets. The most easily understood and most widely recognized objective is the elimination of worker abuses and unscrupulous labor practices by some employers. Although these abuses are common only to a small portion of employers, their visibility provides the incentive for government intervention in the market which influences all employers. These abuses by employers are often counter-productive in the long run, inconsistent with good labor practices, and detrimental

to the progress and growth of the farm firm. Therefore, labor laws and regulations may upgrade the quality of labor management and the sensitivity of employers to good labor management even though this is rarely their explicit objective.

A closely related farm policy objective is protecting the economic and social interests of workers. The social insurance programs for workers, e.g. unemployment insurance, social security, and workers' compensation, are the best examples of the implementation of this policy objective. A third objective is to have a supply of labor such that farmers are able to produce high quality agricultural products and operate sufficiently profitable businesses to keep them in operation year after year. The struggles with policies relative to certification of foreign workers demonstrate that this policy objective is taken seriously. Equity is also a policy objective. This objective is less easily identified, demonstrated, and analyzed than the three previous objectives. But it can be seen easily that there are equity questions related to coverage of farm workers vs. nonfarm workers, workers on small farms vs. workers on large farms, seasonal workers vs. year-around workers, employers in one state vs. employers in another state, and large employers vs. small employers.

Both federal and state labor laws and regulations impact agricultural labor markets. Choice of concentration on federal laws in this paper is not intended to imply that state laws are inconsequential. State laws may go beyond federal laws in their coverage, provisions, and enforcement implications. State laws may also affect some labor practices left unaffected by federal laws. However, a comprehensive review and analysis of state laws and particularly the variation among state laws is beyond the

scope of this paper.

Objectives

The objectives of this paper are to 1) provide an historical perspective for addressing farm labor policy issues, 2) review the stated objectives and major provisions of current labor laws and regulations, 3) identify general policy issues emerging from current laws and regulations, and 4) analyze four laws of current major concern to employers, employees and policy makers: Fair Labor Standards Act, Farm Labor Contractor Registration Act, unemployment insurance and Occupational Safety and Health Act.

Historical Perspective

An understanding of where we are in labor laws and regulations benefits from an understanding of the evolutionary process by which we got to our current situation. This understanding starts with the realization that we have lacked a central thrust to farm labor policy, particularly in the legislative area of intervention in the market through employment laws and regulations. Rather, we have had piecemeal legislation. Definitions, coverage, research preceding implementation, and educational programs following implementation have varied substantially. The net result is that today neither employers nor employees have a good understanding of their realized and unrealized benefits, costs, rights, and reporting requirements under current law.

Farm organizations and agricultural employers have systematically opposed the inclusion of agricultural employment under labor laws and regulations. The position of these organizations and employers has generally been that there were unique characteristics of agricultural

employment warranting the coverage of agricultural employment being different from non-agricultural coverage. Efforts to exclude have been successful in slowing but not stopping the trend to expanded coverage. It now appears that these organizations are putting much less emphasis on opposition to coverage and more emphasis on (1) careful analysis of additional coverage, (2) fairness and consistency in enforcement, (3) understanding of potential advantages to both employers and employees which may accrue from the expanded coverage, and (4) assistance to members in meeting recordkeeping and reporting requirements.

Farm organizations were effectively representing the interests of their members. There were historically important differences between agricultural employers, agricultural employees, the nature of the work and the nature of the production processes relative to their nonfarm counterparts. The industrialization of agriculture, increasing farm size, increased sophistication of farm businesses with accompanying complexity, and the mechanization of many production processes have substantially altered the characteristics of agricultural employment. The old arguments for exclusion are unlikely to gain new strength, relevance, and significance in the coming policy debates.

Uneven enforcement of laws and regulations has been a major complication. Several different federal and state agencies have farm labor law enforcement responsibilities. There has been little effort to coordinate enforcement activities to facilitate employer compliance and assure workers their rightful benefits. The large number of employers with few employees, by nonfarm employer standards, has caused enforcement costs to be very

high on a per employer or per employee basis. Enforcement budgets often have been severely limited relative to an agency's enforcement responsibilities.

Farm labor policy issues, and in particular questions relative to labor laws and regulations, have been dominated by interstate migrant farm worker issues. Although migrant farm workers constitute less than seven percent of the total hired farm labor force; although their earnings are higher than average earnings of nonmigrants; although agriculture is often the employer of last resort for these people, many have argued that migrant worker issues are paramount in the farm labor policy arena. Their problems have been apparent, often extreme in nature, highly visible in some communities, and subject to oversimplification. Much has been accomplished relative to migrant farm workers, but as other papers in this conference suggest, much remains to be accomplished.

Lack of published resource materials written in language understandable to employers and employees has been a major problem. Enforcement agencies generally assume that it is the responsibility of employers and employees to inform themselves of the applicable provisions, recordkeeping requirements, enforcement procedures, and a host of related matters. This lack of systematic organization and presentation of information in combination with the piecemeal nature of the legislation has left many agricultural employers believing that the enforcement agencies "were out to get them." Good working relationships between employers and enforcement agencies resulting in a high level of compliance with the law is the exception rather than the rule. It is common for employees to believe that they have few, if any, rights and that they are not getting all benefits to which they are entitled. Also,

there is a frequent attitude among enforcement agency personnel that agricultural employers are accurately characterized as conniving in enumerable, innovative ways to frustrate realization of the objectives of farm labor laws.

Overview of Current Laws and Regulations

Identification and analysis of problems and issues should be based on an understanding of the coverage and provisions of current laws and regulations. Thus, there follows a brief discussion of objectives, coverage provisions, and responsible agencies for the major farm labor laws and regulations.

Fair Labor Standards Act

The Act is specifically concerned with the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers. It contains provisions and standards concerning minimum wages, equal pay, overtime pay, recordkeeping, and child labor. The Act applies generally to all workers who are engaged in or are producing goods for interstate commerce. However, there are some specific exemptions from requirements. Only agricultural employers with more than 500 man-days of hired labor in any calendar quarter of the preceding year are required to pay the minimum wage. The Act exempts all agricultural employment from overtime pay. There are also provisions for employing a limited number of students at hourly rates lower than the minimum required for other farm workers.

There are explicit provisions affecting employment of minors. The objective is to provide for the health, safety, and welfare of employed youth and to prevent their exposure to certain hazardous jobs. Minors

16 years of age or over are not covered. Children 14 and 15 years old can be employed in any non-hazardous agricultural occupation outside school hours. A child 12 or 13 years of age can be employed outside school hours if he/she has written consent of parents or, if employment is on the same farm where his/her parents are employed. If a child is less than 12 years of age, employment is permitted by parents on a farm owned and/or operated by parents. A child less than 12 years of age can also be employed with the parents' written consent on a farm that is exempt from minimum wage and equal pay provisions under the 500 man-day test.

The 1977 amendments to the Fair Labor Standards Act established a schedule of increases in the minimum wage for farm workers. The minimum wage for farm and nonfarm workers is now the same. The minimum has increased from \$2.65 an hour for calendar year 1978 to \$3.10 an hour beginning January 1, 1980. The minimum wage for calendar year 1981 will be \$3.35 an hour.

The Wage and Hour Division of the U.S. Department of Labor is the responsible agency for the Fair Labor Standards Act.

OSHA - The Occupational Safety and Health Act of 1970

The purpose of this Act is to assure, as far as possible, every working man and woman in the nation safe and healthful working conditions and to preserve human resources. The law covers every employer in the United States engaged in any business that affects interstate commerce. Most farmers hiring ten or fewer employees at any one time during the year are exempt from OSHA inspection and all subsequent rules and penalties. However, serious, willful, or repeated violations by any farm employer are subject to citation.

For covered agricultural employers, there are standards for slow moving vehicle emblems, anhydrous ammonia equipment, temporary labor camps, pulpwood and logging, rollover protection structures for farm tractors, and machinery guarding and shielding. There are also employee training, recordkeeping, and reporting requirements.

Employees must comply with safety and health standards. All rules, regulations, and orders issued under the terms of the act that pertain to conduct in the workplace must be obeyed. Employees are required to participate in training and instruction as it relates to specific job assignments and to use and maintain personal protective equipment provided by the employer. However, employees are not subject to fines for noncompliance as are employers.

The law is administered by the Occupational Safety and Health Administration of the U.S. Department of Labor.

Unemployment Insurance

The objective of unemployment insurance is to replace part (usually about 50%) of a person's income loss due to unemployment. These benefits are limited to persons temporarily out of work through no fault of their own. Effective January 1, 1978, some agricultural employment was covered by unemployment insurance. Coverage includes those farm workers who during the current or previous calendar year, a) employed ten or more workers in each of 20 or more weeks, or b) paid \$20,000 or more cash wages in any calendar quarter of the current or preceding calendar year. Most states have adopted this federal standard, but some states have exceeded it by including a higher proportion of agricultural employment. It is possible for a crew leader, rather than the farm operator to be the

employer liable for paying the unemployment tax, maintaining the required records, and submitting the required reports.

To receive unemployment insurance benefits, an unemployed farm worker has to meet certain requirements. These requirements are typically based on employment with a covered employer for some minimum period of time and/or minimum compensation level. Employee provisions are determined through state law as there is no federal law specifying minimum benefit requirements and levels. Unemployed migrant farm workers having returned to their home states may file claims at their local employment services office. The responsible agency is the state employment agency operating the unemployment insurance program under the Federal Unemployment Tax Act. The Secretary of Labor must approve all state laws and their operation.

Workers' Compensation

Workers' compensation is an insurance system that provides protection for workers having job related injuries or diseases. It frees the employer from liability for these injuries and illnesses. Workers' compensation programs in the United States operate under state law. There are neither federal programs nor federal guidelines for individual state programs. Consequently, the coverage provisions and employee benefits vary substantially.

The variation in coverage and provisions among states has led to several studies which conclude that coverage is "inadequate and inequitable." Often stated desirable changes include compulsory coverage of all employment, full coverage of all work related diseases, improved rehabilitation services without arbitrary limits, and elimination of arbitrary limits on duration

of some benefits. However, to date, the states' rights approach has prevailed and workers' compensation provisions have been left to individual states.

Farm Labor Contractor Registration Act

The objective of the Act is to reduce irresponsible activities of farm labor contractors which result in exploitation of farm workers, farm operators, and the general public. This objective is accomplished by requiring farm labor contractors, their full-time or regular employees, and farmers using the services of farm labor contractors to observe certain rules set forth in the Act.

This Act, as amended, is concerned primarily with farm labor contractors (crew leaders). A farm labor contractor (crew leader) is any person who, for a fee, for himself or on behalf of another person, recruits, solicits, hires, furnishes or transports any number of workers (excluding members of the contractor's immediate family) for agricultural employment whether within a state or across state lines.

There have been unusual and perhaps unique definitions of key words from the Act by the Department of Labor. "Person" includes any individual, partnership, association, joint stock company, trust or corporation. "Agricultural employment" is defined very broadly to include virtually all aspects of employment in agriculture. In addition to on farm employment, the definition includes handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. The term "migrant worker" for purposes of this Act is defined to include any individual whose primary employment is in agriculture, or who performs

agricultural labor on a seasonal or other temporary basis. Any individual performing agricultural work is a migrant worker. Whether or not the worker migrates is irrelevant.

Farm labor contractors covered by this Act must register with the U.S. Department of Labor. They must also, at the time of recruitment, inform each worker in writing, in a language in which the worker is fluent, about the conditions of employment. Contractors must clearly post in a language in which the worker is fluent the terms and conditions of occupancy for housing owned or controlled by the contractor. Contractors must, upon arrival at a place of employment, post the conditions of employment. Finally, the farm labor contractor, if responsible for paying the wages, must keep payroll records and provide each worker with a statement of earnings, withholdings, and reasons for withholding.

The agency responsible for the implementation and enforcement of the Act is the U.S. Department of Labor, Wage and Hour Division.

Civil Rights Regulations

The objective is to prevent discriminatory employment practices on the basis of race, color, religion, sex, national origin, handicap, or ancestry. The Federal Civil Rights Act of 1964 applies to farm employers with 15 or more employees. The responsible agency is the U.S. Department of Labor, Wage and Hour Division

Alien Worker Employment

An alien is a foreign-born citizen in the U.S. who has not become naturalized. Alien farm workers may be legal or illegal aliens. A certified alien farm worker is one who is legally in the country through a certification program administered by the Department of Labor. An

illegal alien (undocumented alien) is not certified by the Department of Labor and his presence in the U.S. is in violation of the Immigration and Nationality Act. With the exception of registered farm labor contractors, farm employers are not prohibited by any federal law from employing illegal aliens. However, actual involvement in securing such employees or shielding them from detection can lead to severe penalty for criminal violations.

The responsible agencies for alien worker matters are the Division of Labor Certification of the Department of Labor, and the Immigration and Naturalization Service of the Department of Justice.

Federal Motor Carrier Safety Regulations

The objective of these regulations is to assure reasonably safe condition and operation of vehicles in which migrant farm workers are transported. These regulations apply to the transport of migrant farm workers if the total distance is more than 75 miles, but only if such transportation is across a state line. The regulations do not apply if fewer than three workers are transported at any one time, or if a passenger automobile or station wagon is used. A migrant worker transporting himself or his immediate family is not affected. Compliance is required of the person or business responsible for the transportation of the workers. The responsible agency is the U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety.

Social Security

The objective of the Social Security coverage of hired farm workers is to provide monthly cash benefits to replace a part of the earnings lost through an employee's retirement, death, disability, or hospitalization.

Farm employers and employees are covered if there are one or more agricultural employees on the farm who meet either of the following tests:

- 1) employee paid \$150 or more in cash wages in the year or
- 2) employee performed agricultural labor on the farm for 20 or more days during the year for cash wages computed on a time basis (e.g., hourly, daily, weekly, or monthly).

Some types of family employment are not covered by social security.

Covered farm employers must withhold tax from their employees' cash wages and match the employee tax with an equal amount. The wage base for 1980 is \$25,900 and the tax rate 6.13 percent. In 1981, the wage base will increase to \$29,700 and the tax rate will be 6.65%. The wage base is an individual employee's maximum total earnings in a calendar year on which an employer and employee pay social security tax. The Internal Revenue Service collects the taxes for the Social Security Administration.

Targeted Jobs Tax Credit and Work Incentive Credit

These tax credit programs are established to provide economic incentive for employment of certain groups of workers. Included are welfare recipients, handicapped persons undergoing vocational rehabilitation, certain members of economically disadvantaged families, certain ex-convicts, and certain other groups receiving general assistance or undergoing qualified cooperative education training. A percentage of the wages paid new employees may qualify as a direct credit against the tax liability of the employer.

General Farm Labor Law Policy Issues and Problems

There are two kinds of policy issues associated with current farm labor laws and regulations. First are general issues which stem from more than one law or regulation. Second are issues related to a specific law or

regulation. Resolution of these policy issues and problems would involve in almost all cases a trade-off between employer and employee economic interests. The purpose of the following discussion is to identify issues and problems, and suggest some alternatives for resolution of the problems.

Five general policy issues and problems are discussed: 1) coverage of agricultural employers and employees, 2) recordkeeping and reporting requirements, 3) impacts on cost of production, 4) unique problems of interstate migrant farm workers, and 5) information for employers and employees about coverage and provisions of laws and regulations.

Coverage of Agricultural Employers and Employees

Coverage refers to the specific groups of employers and employees coming under the provisions of a law or regulation. As has been illustrated, coverage varies from law to law. It is common for medium size agricultural employers to be covered by some, but not all, agricultural labor laws. A further complication is the variation in criteria on which coverage is based. Coverage may be determined by number of employees, payroll, duration of employment, man-days of labor, or some combination of these factors.

The coverage problem and resulting confusion can be illustrated by comparison of some of the actual coverage criteria used in federal laws. The number of employees criterion is used for civil rights regulations. The Federal Civil Rights Act of 1964 applies only to employers with 15 or more employees. The payroll criterion is used for social security employee taxes. Farm employers are included if there are one or more employees paid \$150 or more in cash wages in the year. Also, farm employers are included if one or more employees performed agricultural labor on the farm for 20 or more days during the year for cash wages. This illustrates the

duration of employment criterion. The man-days of labor criterion is used for the minimum wage provisions of the Fair Labor Standards Act.

Agricultural employers who use more than 500 man-days of labor in any calendar quarter of the preceding year must pay at least the minimum wage. Unemployment insurance illustrates use of a combination of these criteria. Coverage includes those farm employers who during the current or previous calendar year (a) employed 10 or more workers in each of 20 weeks or (b) paid \$20,000 or more in cash wages in any calendar quarter of the preceding calendar year. For many agricultural employers, coverage questions can be answered only by a careful review of the coverage criteria for each law or regulation. Furthermore, exculsion or inclusion may change from year to year for a particular employer as his amount of hired labor varies.

Exclusions from coverage may limit the ability of non-covered employers to compete with non-agricultural and covered agricultural employers for new employees. Potential employees would be expected to favor covered employers because of the greater number of fringe benefits. Coverage of employers is generally at little or no cost to employees.

Employees also have coverage problems and confusion. A change in employers with no perceptible change in job description or employment conditions can result in gaining or losing certain fringe benefits. Coverage often differs between farm and non-farm employment. Employers may not inform or may not even have information about employee required fringe benefits under the law. Employees may hesitate to seek information about coverage for fear of jeopardizing their employment.

The simple solution to coverage problems would be uniform coverage

provisions for all agricultural and non-agricultural employment under all laws and regulations. This resolution is unlikely. The piecemeal approach to legislation, the precedent of defining coverage on a law by law basis, and the continued efforts of employer interest groups to limit coverage make unlikely the logical policy of uniform coverage. However, as a minimum, elimination of differences in criteria for defining coverage would be helpful. For example, the concept of number of employees in combination with length of employment or quarterly payroll, as used in defining unemployment insurance coverage, could be applied to minimum wage, workers' compensation, farm labor contractor registration, OSHA, civil rights regulations, transportation of migrant workers, and social security. This would facilitate both employer and employee understanding of coverage and fringe benefits.

Recordkeeping and Reporting Requirements

Most labor laws and regulations specify data and reports which employers are required to submit regularly to enforcement and administrative agencies. Ideally, the data necessary for answering questions from enforcement agencies would be the same as that necessary for good employment practices. However, employers often see recordkeeping and reporting requirements as burdensome because of demand for data beyond that routinely needed for their own management decisions. The profusion of paperwork requires a significant amount of time of most agricultural employers.

An important problem is the variation in recordkeeping and reporting requirements among government agencies. Reports may be monthly, quarterly, and or annual. They may require data about payroll, number of employees, wage rates, perquisites, hours of work, job descriptions, training and

injuries.

Some current recordkeeping and reporting requirements illustrate the problem of variation in timing and content. The Fair Labor Standards Act requires a farm employer to have payroll records containing the following information with respect to each worker subject to the minimum wage: name, address, sex, occupation, birthdate, number of man-days worked each week or each month, time of day and day of week when workweek begins, basis on which wages are paid, hours worked each workday, total hours worked each workweek, total daily or weekly earnings, total additions to or deductions from wages paid each pay period, total wages paid each pay period, date of payment and period covered by payment. No reports are required but employers must have these data routinely available to personnel of the Wage and Hour Division of the U.S. Department of Labor. Also, an employer not employing workers subject to the minimum wage is required to have data routinely available to substantiate the exclusion from coverage.

The Occupational Safety and Health Act of 1970 (OSHA) has detailed recordkeeping and reporting requirements for employers with 11 or more employees. Requirements include a log of occupational injuries and illnesses, a supplementary record of each occupational injury and illness, and an annual summary of occupational injuries and illnesses. The summary must be posted during the month of February each year. In addition, employers must report to the Secretary of Labor within 48 hours each accident or health hazard that results in one or more fatalities or hospitalization of five or more employees.

Although Workers' Compensation and OSHA are both related to accidents and illness in the workplace, the reporting requirements are quite different. This can be illustrated with the requirements for employers in Ohio. The Ohio requirements are similar to those in most other states. There is no 10 worker or less exemption for workers' compensation. All Ohio employers are required to report regularly to the Bureau of Workers' Compensation. Payroll reports and premium payments must be made every six months. Even if there are no employees, a previously covered employer must file a biannual payroll report and indicate "no payroll this period."

Social security employee tax requirements may result in monthly or annual reports to the Internal Revenue Service. An annual report must be submitted by January 31 each year. However, if the total social security tax due reaches \$200 or more for part of the year, payment and reports must be submitted by the 15th of the month following the month in which a total of \$200 or more has been withheld. Each employee from whom social security taxes have been withheld must be provided a statement showing total wages and social security taxes withheld.

Each state specifies recordkeeping requirements for employers subject to unemployment insurance contributions. For example, in Ohio, covered employers are required to keep employees informed as to their "covered" status, furnish identification notices to employees upon separation, submit quarterly payroll reports to the state employment service, maintain a 5-year record of employment, and upon request, supply wage, separation and other pertinent information to the state employment service.

Farm operators using the services of registered labor contractors are required to maintain payroll records of workers recruited for their benefit. The farmer must have these records even if the workers are paid directly by the contractor.

The recordkeeping and reporting problems center on the quantity of reporting, variation in information required and variation in forms. The problem stems from the piecemeal nature of legislation and lack of coordination among responsible agencies in elimination of duplicate reporting requirements. As long as the recordkeeping and reporting requirements are specified in each law without regard to other laws and regulations, the problem will not be resolved. Reducing variation in coverage criteria, coordinating reporting requirements so that the same report could be submitted to several agencies, and adopting standard definitions of key words and concepts would be major steps toward decreasing the time and frustration of recordkeeping and reporting by employers. These changes would also increase the quality of data for conduct of enforcement programs and provision of services and benefits to employees.

Impacts on Cost of Production

Most farm labor laws and regulations increase the costs of production for employers. Employers tend to evaluate the impacts of these additional costs without regard to positive impacts on employees. There is a trade-off between the higher cost of production for employers and thus higher food costs for consumers, and the increased wage and fringe benefit package for employees.

The cost impacts vary among employers because of variation in coverage

provisions, capacity to pass the increased costs on to consumers and the opportunities for substitution of capital for labor through mechanization. However, review of cost of production budgets will demonstrate that for most agricultural products, the proportion of total cost accounted for by fringe benefits required through farm labor laws and regulations is minimal. One also finds that in most cases other costs of production have increased more rapidly than the cost of required fringe benefits. Employer opposition to farm labor laws probably centers more on recordkeeping and reporting requirements, perceived harassment by enforcement agencies and loss of flexibility in employment practices than on increased cost of production. However, cost of production impacts will continue to be at issue as long as the impacts among employers vary because of coverage criteria and employers fail to capitalize on benefits from increased and improved fringe benefit packages.

Unique Problems of Interstate Migrant Farm Workers

In the historical perspective section of this paper, reasons for the special attention paid migrant farm workers in farm labor laws was discussed. The consequence of this attention is that a much higher percentage of migrants than non-migrants are covered by the federal minimum wage, OSHA, unemployment insurance, and workers' compensation because of the characteristics of farms on which migrants tend to be employed. These farms are relatively large and consequently the excursions under many of the laws do not apply. It appears that there is widespread agreement that migrant farm workers should be covered by all or virtually all labor laws and regulations.

A policy question is whether or not migrant and non-migrant farm workers should be treated differently. A recent example from Ohio illustrates the

kind of explicit distinction sometimes drawn between migrant and non-migrant employees. Practically all employed minors in Ohio are required to have age and schooling certificates (work permits). However, the state code was recently revised to exclude all minors in agricultural employment from the work permit requirement except those living in temporary agricultural labor camps, i.e. children of migrant farm workers. It is more difficult for migrant children to get work permits than non-migrants because the migrant children must provide proof of birth from their home state to the Ohio school district while the local children need not provide the proof of age because the school district already has it on file. An additional consequence is the exclusion of 12 and 13 year-old migrant children from employment through the work permit regulation even though such employment is permitted under federal law. The net result in Ohio is that migrant children will find it harder to qualify for agricultural employment than non-migrant children and a smaller proportion will qualify because of the state age restriction. The irony of this situation is that many of the minor migrant children in Ohio come to the state with their parents for the express purpose of agricultural employment. Yet the state law makes it more difficult for migrant children than non-migrant children to attain employment.

Information for Employers and Employees

Several references have been made to the variation in coverage and provisions of farm labor laws and regulations affecting agricultural employment. The number of different agencies which employers and employees deal with has also been emphasized. This is the kind of compliance and enforcement maze in which systematic dissemination of information by

government agencies would be very helpful. However, in most cases there is little effort by these agencies to assist employers and employees with reference material. In some cases, the only source of information is official publication of laws and regulations. These official publications are not readily available to employers and employees and more importantly, are rarely understandable to persons not having legal training. Reference materials from government agencies written for employers and employees have little impact. They are spotty in their coverage, oriented to a summary of provisions rather than current questions faced by employers and employees, difficult to keep current through reorder and generally unknown to local enforcement personnel.

The myriad of farm labor laws and regulations in combination with the dearth of information from government agencies has caused the Extension Services in some states to publish farm labor law handbooks.¹ Employers and employees in these states can develop a reasonably good understanding of the laws and regulations affecting them. However, employers and employees in other states have little and usually no reference material available to them. It appears that the government agencies at both the federal and state levels responsible for enforcement of farm labor laws could improve compliance, reduce employer and employee frustration, and improve their working relationships with employers and employees by assuming the responsibility for systematic dissemination of farm labor law information.

Policy Issues and Problems for Selected Laws and Regulations

In addition to the general policy issues and problems discussed in the

previous section, there are specific issues related to individual laws and regulations. In this section, issues and problems relative to the Fair Labor Standards Act, Farm Labor Contractor Registration Act, unemployment insurance, and OSHA will be discussed. These four were selected because employer or employee groups have identified specific problems with current laws and regulations, the current laws are ineffective in accomplishing their stated objectives, and/or Congress and the Department of Labor are or soon will be considering changes.

Fair Labor Standards Act

This Act has many provisions and affects agricultural employment in more ways than any other single act. Systematic review of all of its impacts on agricultural labor markets is beyond the scope of this paper. The following discussion is limited to child labor and minimum wage issues.

The child labor provisions have major impacts on agricultural employment practices. The seasonal demand for labor, minimum skill levels required, minimum emphasis on training programs, unimportance of worker turnover, willingness to work at lower wage rates than adults, and availability in most rural communities combine to make youth an important source of labor in agriculture. Youth would constitute a much higher percentage of the agricultural labor force in the absence of the child labor provisions of the Fair Labor Standards Act. There are persuasive arguments for the current limitations on employment of youth in agriculture. However, prior to adoption of more restrictive child labor laws, careful attention should be given the benefits to youth from employment opportunities provided by agriculture.

Two issues related to child labor are of immediate concern: re-entry to fields following pesticide application and employment of children less than 12 years of age. "There is no issue" probably is the intuitive reaction of most people. The children's welfare overrides any employer interest. More careful examination reveals that there are some unique aspects of the issues. The re-entry problem hinges on standards. No one could argue reasonably that children should be exposed to pesticide injury through employment which requires premature re-entry to a field. However, establishment of standards acceptable to the Department of Labor, EPA, the courts and employers has not been accomplished. Many studies are currently underway designed to provide the data base for development of defensible re-entry standards. Resolution of the problem evidently awaits completion of these studies.

Exclusion of most agricultural employment for children less than 12 years of age causes little problem for agriculture as a whole. The exceptions are strawberry harvest in Washington and Oregon, and potato harvest in Maine. In these situations, children less than 12 years of age have been an important part of the harvest work force. This has led to specific minimum wage exemptions and authorization for the Secretary of Labor to grant a waiver from Fair Labor Standards Act restrictions for children ages 10 and 11. The necessity of a harvest work force and the difficulty and perhaps impossibility of accomplishing the harvest without employment of children less than 12 years of age has been effectively argued by employers. The tendency for prevailing wages to be considerably less than the minimum wage and less than a wage necessary to attract older youth and adults to harvest employment has been an effective argument by

those opposed to the position of the employers. A longer-run resolution of the problem acceptable to all interested parties is not apparent.

From May 1, 1974 to January 1, 1980, the federal minimum wage increased from \$1.30 to \$3.10 per hour, a 138 percent increase. According to unpublished Department of Labor data, only 4.4 percent of the 1978 U.S. agricultural employers had more than 500 man-days of labor in any calendar quarter and were thus required to pay at least the minimum wage. However, these employers accounted for about 43 percent of all agricultural employees. Historically, there has been a close relationship between the wage rate paid uncovered workers and the required minimum for covered workers. The unpublished Department of Labor data show that this is no longer the case.

Assuring a wage floor for those least likely to compete effectively for high paying jobs has social appeal. This is particularly true in agriculture where wage rates historically have been low compared to non-farm rates. The importance of youth, elderly, and unskilled workers to the farm labor force also suggests the desirability of having a wage floor. However, there are important employment implications of the minimum wage. The jobs in agriculture most likely to be affected by the major increases in minimum wage are those held by youth, the elderly, and part-time workers not paid on a piece-rate basis. The impacts of minimum wages on labor markets have been studied extensively by economists. The results are inconclusive. Of particular importance to agricultural labor markets are the impacts of the minimum wage increases on employment opportunities for youth and the elderly, on total employment, and on the rate at which jobs in agriculture are being lost to mechanization. The Minimum Wage Study

Commission is currently investigating these and many other issues. Hopefully, their comprehensive reports will provide new insights and policy guidelines.

There are some important relationships between the minimum wage levels and child labor issues. There is an exemption from minimum wage coverage for hand harvest workers who commute daily from their permanent residence, are paid on a piece-rate basis for work generally recognized as piece-rate work, and were employed in agriculture less than 13 weeks during the preceding calendar year. Also exempted are children of migrant farm workers less than 16 years of age employed in piece-rate harvest work on the same farm where their parents are employed. If these two exemptions were removed, it is likely that employment of children less than 12 years of age would no longer be at issue. There is a high probability that these children would not be employed if the wage rate had to be as high as the minimum wage. However, this would not resolve the basic problem of a labor supply for those agricultural employers for whom 10 and 11 year olds are now important.

Farm Labor Contractor Registration Act

Irresponsible and unscrupulous activities of farm labor contractors (crew leaders) caused Congress to take action through the Farm Labor Contractor Registration Act (FLCRA). Although enacted in 1965, it had little impact until amended in 1974. There are currently two important problem areas related to FLCRA. The first is the guidelines and activities of the Employment Standards Administration of the Department of Labor. The second is lack of enforcement. Although these problems are of major concern

to employer and/or employee interest groups, few would argue that the original objectives of FLCRA are any less relevant today than at the time the serious problems with labor contractors were first identified. The unscrupulous activities of some labor contractors continue. Farm operators and the general public suffer. However, migrant farm workers are the big losers from these labor contractors. The contractors exercise much control over workers. The workers may depend on contractors for job information, transportation, housing, and even choice of retailer for basic purchases. Historically, farm workers claiming to be aggrieved by contractors had little chance of recourse. Several agricultural employer groups are on record protesting the Labor Department's implementation of FLCRA in ways that go beyond the intent of Congress. The implementation has caused many compliance and reporting problems for employers but there have not been accompanying significant benefits for migrant farm workers. Polopolus has identified the fundamental question -- Has Congressional intent been usurped by administrative prerogatives? The answer appears to be yes. The major problem areas are definition of a farm labor contractor, definition of a migrant worker, the concept of acting "personally," and the exemption based on the concept of "on no more than an incidental basis."

Prior to FLCRA, the description of a crew leader and his role relative to migrant farm workers was widely understood and not controversial. Crew leaders provided migrant workers for agricultural employment in receiving states by assembling groups in a supply state, transporting them to one or more states of employment and providing some personnel

services for both migrant workers and farmers during the period of employment. However, under FLCRA a farm labor contractor may include personnel officers of corporate packing houses, employees of farmers who drive trucks in the field while other employees ride along, growers who pick up local workers at their homes and take them to their own fields, farm supervisors using their personal automobiles to show crew leaders the next day's work location, and foremen and officers of corporate farms (Polopolus).

The original focus of FLCRA was on migrant farm workers because of the traditional relationship between migrants and crew leaders. However, migrancy is no longer related to the definition of migrant farm worker. Practically all agricultural employees are migrant farm workers.

FLCRA defines "person" very broadly to include legal entities such as trust and corporations. However, in implementation of the Act, corporations are ruled incapable of acting personally. Therefore, the exemption in the Act for corporations supplying only their own migrant workers is void.

The Act also exempts an employer's regular or full-time employee who engages in farm labor contractor activities only on an incidental basis and only for the employer. The problem is that virtually any level of farm labor contracting activity on a regular basis has been determined to be on more than an "incidental basis." This effectively voids the "incidental basis" exemption provided in the Act.

The second general problem with FLCRA is enforcement. The enforcement emphasis appears to have been on registration of labor contractors rather than on finding and charging irresponsible and unscrupulous activities of contractors (Waterfield). This kind of enforcement activity is difficult and even sometimes dangerous to Department of Labor personnel. Crew leaders are generally difficult people to deal with and they are understandably unenthusiastic about the objectives of FLCRA. But given the continuing problems with crew leaders and the enforcement responsibilities of the Department of Labor, it appears that more emphasis on enforcement would be in order. In a recent hearing by the Manpower Subcommittee of the House Government Operations Committee, Department of Labor spokesperson Craig Berrington reported that more resources would be devoted to enforcement work (Waterfield).

It appears that the original legislative intent and stated objectives for FLCRA will not be accomplished until Congress takes corrective and clarifying action. It would be helpful if this action took cognizance of the state objectives for FLCRA, the Department of Labor interpretations and enforcement activities to date, the employer and migrant worker concerns, and most importantly, the continued exploitive activities of crew leaders.

Unemployment Insurance

The extension of unemployment insurance to some agricultural employment January 1, 1978 followed careful study of the likely impacts of coverage (Bauder, et.al.). With the current coverage provision, relatively few employers are affected, but given the characteristics of

these employers, a relatively high percentage of farm workers are covered. There is almost universal coverage of nonfarm employment. Therefore, an important policy issue is extension of coverage to a higher proportion of agricultural employment.

Many arguments have been used by agricultural employers and farm organizations in opposition to more inclusive coverage of agricultural employment. The most important have been cost to employers, disincentives for employment in agriculture, administrative problems and fraudulent claims, and unsuitability of unemployment insurance for temporary employees (Sosnick). The conclusion based on nonfarm experience with unemployment insurance, experience with temporary coverage through SUA (Supplemental Unemployment Assistance), and experience to date with partial coverage of agricultural employment is that there are no convincing arguments against extending coverage to more agricultural employers. It appears that extending coverage is now a political rather than economic or social question.

There are some important problems associated with the current coverage criteria. Some unemployed farm workers are denied benefits simply because of the characteristics of their employer(s). Their own attachment to the labor force, inability to find employment, and desire to return to agricultural employment the following season do not influence whether or not they get benefits. Two farm workers with the same job description, length of employment, earnings, and reason for unemployment may be treated differently for benefit purposes simply because of the differences in characteristics of their employers. Employers may also face recruitment problems because of their inability to provide the same fringe benefit package that a competitor

for employees can provide.

Another issue is administration of the program so that only those, but all of those, entitled to benefits actually receive them. This is by no means a new issue or one unique to agriculture. There are some characteristics of agricultural employment which make administration of the program difficult. Some workers may have several employers during the year. This complicates construction of an accurate employment history. There may be problems with language, interstate claims, employers not responding to requests for information, and government agencies' reluctance to hassel with the complexities of benefit claims for farm workers. Consequently, some workers probably are denied rightful benefits and some employers probably overpay their unemployment insurance taxes. The overpayment stems from inadequate data on which to base reports, and lack of understanding of the consequences of untimely and inaccurate reporting.

OSHA - Occupational Safety and Health Act

The uniformity of OSHA coverage between farm and nonfarm employment results in practically all policy issues and problems being general rather than specifically related to agriculture. The agricultural standard for temporary labor camps is an exception.

In addition to the OSHA standards for temporary housing, there are other Department of Labor standards for housing. These standards have been in effect for several years. The older standards, referred to as "620 standards" after the part of the Code of Federal Regulations where they are officially published, have been used as a basis for determining which farm employers could receive farm placement and other services of the Department of Labor. Only those employers with approved housing under 620 standards could receive Department of Labor services. Because the 620 standards and OSHA housing standards are different in some details, an employer may have more than one Department of Labor inspection of his temporary housing. It has been possible to have acceptable housing under one standard but not necessarily the other.

The solution to this problem is straightforward. The Department of Labor could decide to use one or the other set of housing standards in all of its inspections. The other standard could be "grandfathered" so that an employer would not face a changing standard for his already constructed housing. Informal reports from the Department of Labor indicate that this elimination of duplicate housing standards will be accomplished in the very near future.

Summary

Government intervenes in agricultural labor markets through labor laws and regulations. The objectives of this intervention are to eliminate worker abuse and unscrupulous labor practices, protect economic and social interests of workers, guarantee a supply of labor for producers, and provide and equitable treatment of workers and employers. The specific

objectives for this paper are to: 1) provide an historical perspective for addressing farm labor policy issues, 2) review the stated objective and major provisions of current labor laws and regulations, 3) identify general policy issues emerging from current laws and regulations, and 4) analyze four laws of current major concern to employers, employees and policy makers.

Current farm labor laws and regulations are the result of piecemeal legislation. Farm organizations and agricultural employers have systematically opposed the inclusion of agricultural employment under labor laws and regulations. There have been important differences between farm and nonfarm employment but the industrialization of agriculture has eliminated most of the differences. Uneven enforcement of laws and regulations has been a problem. Problems of interstate migrant farm workers have dominated the farm labor policy arena. Lack of published resource materials understandable to employers and employees has been a major problem.

The most important federal farm labor laws and regulations currently affecting employers and employees are Fair Labor Standards Act, OSHA - The Occupational Safety and Health Act, unemployment insurance, workers' compensation, the Farm Labor Contractor Registration Act, civil rights regulations, alien worker employment regulations, federal motor carrier safety regulations, social security, and targeted jobs tax credit and work incentive credit.

Five general policy issues and problems are discussed: 1) coverage of agricultural employers and employees, 2) recordkeeping and reporting requirements, 3) impacts on cost of production, 4) unique problems of

interstate migrant farm workers, and 5) information for employers and employees about coverage and provisions of laws and regulations.

The final section of the paper is a discussion of specific issues and problems relative to the Fair Labor Standards Act, Farm Labor Contractor Registration Act, unemployment insurance and OSHA. Re-entry to fields following pesticide application and employment of children less than 12 years of age are the most important issues relative to child labor provisions. Although the impacts of minimum wages have been studied extensively, the results are inconclusive. There remain questions about their impact on agricultural employment opportunities for youth and the elderly, on total employment and on the rate at which jobs in agriculture are being lost to mechanization.

Irresponsible and unscrupulous activities of crew leaders continue to harm migrant workers and their employers. The Farm Labor Contractor Registration Act is intended to eliminate these activities. However, problems with implementation and enforcement of the Act have limited its impact. Specific issues include the definition of a farm labor contractor, definition of migrant worker, the concept of acting "personally," and the exemption based on the concept of "on no more than an incidental basis." The enforcement emphasis has been on registration of labor contractors rather than on finding illegal activities and charging crew leaders.

More extensive coverage of agricultural employment is a major question relative to unemployment insurance programs. Historically, there have been persuasive arguments against more extensive coverage of agricultural

employment. The experiences with nonfarm coverage, the temporary Supplemental Unemployment Assistance program and partial agricultural coverage suggest that there are no longer sufficient reasons for limiting coverage.

The OSHA agricultural standards for temporary labor camps are not entirely consistent with the older "620 standards" of the Department of Labor. The dual standards and resulting multiple inspections of the same labor camp by the Department of Labor cause compliance problems for agricultural employers. The problem could be resolved through adoption of a single set of housing standards.

¹Some examples are Ohio Farm Labor Handbook, Bernard L. Erven, et.al., The Ohio State University; Handbook of Regulations Affecting Florida Farm Employers and Employees, C. D. Covey, Florida Cooperative Extension Service; The Law and Michigan Agricultural Labor, Allen E. Shapley, Michigan State University; Farm Labor Regulations, Dennis U. Fisher, Cornell University.

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